

DECISION



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Schneider
GGM
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20549

FILE: B-195188

DATE: June 17, 1981

MATTER OF: Redwood Employees Protection Program

DIGEST: Secretary of Labor is authorized by Federal Claims Collection Act to compromise, suspend, or terminate collection of overpaid benefits made under Redwood Employee Protection Program pursuant to the Federal Claims Collection Act, 31 U.S.C. §§ 951-953. B-171934, April 2, 1971, distinguished.

This decision is in response to a request from the Acting Solicitor of the U.S. Department of Labor concerning the authority of the Secretary of Labor to compromise, suspend, or terminate the collection of overpayments made pursuant to the Redwood Employee Protection Program. The program provides rights and benefits to persons adversely affected by the expansion of the Redwood National Park. Act of March 27, 1978, Pub. L. No. 95-250, 92 Stat. 163, 172-182. The issue of overpayments to program beneficiaries is not addressed in the Act.

The Labor submission does not mention any specific overpayments. Instead, it makes reference to an agency position based on an earlier Comptroller General decision concerning the propriety of waiving overpayments under the Disaster Relief Act of 1970. The letter suggests, nonetheless, that overpayments under the Redwood Employee Protection Program may be compromised, suspended or terminated under the Federal Claims Collection Act, 31 U.S.C. §§ 951-953 and its implementing regulations.

Under that Act, as implemented by the Federal Claims Collection Standards, 4 C.F.R. 101 et. seq., administrative agencies are required to take aggressive collection action on claims of the United States arising out of their activities. This includes the authority to compromise, terminate, or suspend collection action. See, e.g., 55 Comp. Gen. 1438, 1439 (1976). Specifically, 31 U.S.C. § 952(b) states, in pertinent part:

"With respect to such claims of the United States that have not been referred to another agency, including the General Accounting Office, for further collection action and that do not exceed \$20,000, exclusive of interest, the head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards as may be

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promulgated jointly by the Attorney General and the Comptroller General, may (1) compromise any such claim, or (2) cause collection action on any such claim to be terminated or suspended where it appears that no person liable on the claim has the present or prospective financial ability to pay any significant sum thereon or that the cost of collecting the claim is likely to exceed the amount of recovery.***"

The United States also has the right, independent of statute, to recover funds it or its agents have paid erroneously. See United States v. Wurts, 303 U.S. 414, 415 (1938). Therefore, the overpayment of statutory benefits establishes a claim of the United States. This claim may be compromised, or collection action may be terminated, under the terms of the Federal Claims Collection Act.

It is important to note, however, that the scope of authority granted by the Act is limited. First, the claim may not exceed \$20,000. Second, in order to justify the compromise, suspension, or termination of collection, the debtor must be unable to pay, or it must appear that the cost of further action will be likely to exceed any recovery. 31 U.S.C. § 952(b). See also, 4 C.F.R. §§ 103.2, 103.4, 104.2, and 104.3.

In his letter, the Acting Solicitor referred to our decision of April 2, 1971, B-171934, in which we stated that the Secretary of Labor did not have authority to waive overpayments made under the Disaster Relief Act of 1970. That statement is not controlling in this case. The statement referred only to the Secretary's authority to waive overpayments under the Disaster Relief Act. Because it was not necessary to our decision, we did not consider the Secretary's authority to compromise, terminate or suspend collection under the Federal Claims Collection Act. The term "waiver" is defined as an intentional relinquishment or abandonment of a known right or privilege. 43 Comp. Gen. 311, 314 (1963). In the context of our 1971 decision, waiver would have constituted forgiveness of the debt owed the United States for overpayment of benefits. We decided that the Secretary had no statutory authority to waive the Government's claim. Waiver must be distinguished from the compromise or termination of collection authorized by the Claims Collection Act. These actions do not constitute forgiveness of the debt owed the United States. Rather they are the discontinuance of the Government's attempt to recover all it is owed based on the recognition that, because of the finances of the debtor or potential problems in litigation, further recovery would be unlikely or too costly.

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For the foregoing reasons, it is our conclusion that the Secretary of Labor may compromise, suspend, or terminate collection action for overpayment of Redwood Employee Protection Program benefits under the limited authority of the Federal Claims Collection Act.

Milton F. Jordan

Acting Comptroller General
of the United States